

Vau Schaik



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Norden Service Company, Inc.--Reconsideration

File: B-235526.2

Date: January 8, 1990

DIGEST

1. Since, based on further review of the record, including new information submitted by agency, it appears that initial protest with respect to cost evaluation issue may have been incorrectly dismissed as untimely, General Accounting Office reinstates that issue and considers it on the merits.

2. Agency decision to select for award higher cost, higher rated technical proposal is unobjectionable where under solicitation evaluation scheme technical concerns were more important than cost and agency determined that the cost to the agency to bring the lower cost offeror up to the technical level of the eventual awardee outweighed the cost advantage of the offeror with the lower technical rating.

DECISION

Norden Service Company, Inc., requests reconsideration of our decision, Norden Service Co., Inc., B-235526, Aug. 22, 1989, 89-2 CPD ¶ 167, in which we denied in part and dismissed in part Norden's protest against the award of a contract by the Navy under request for proposals (RFP) No. N00140-88-R-RD06 to Comptek Research Inc. Norden argues that part of its protest relating to the Navy's cost evaluation which we dismissed as untimely, was in fact timely filed. On reconsideration, we agree with Norden that the cost evaluation issue was at least in part timely filed and we will consider that issue on the merits and deny the protest. We modify our initial decision accordingly.

As we explained in our initial decision, in its comments on the Navy's report on the initial protest, for the first time Norden challenged the Navy's evaluation of the technical and cost proposals. The challenge to the cost

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evaluation consisted of the arguments that even if the Navy's figures used in the cost analysis were correct, Norden was still low and that Norden's proposed costs should not have been increased during the cost analysis to include training for Norden employees and to make up for other deficiencies in the proposal. In support of these arguments, Norden referred to evaluation summaries which the record indicated the Navy had given to Norden on May 17. Since it appeared that Norden was given the information from which it formed its protest of the technical and cost evaluations on May 17, but did not raise those issues until its July 10 comments on the agency report, we dismissed those issues as untimely.

In its reconsideration request, Norden explains that the Navy had deleted some cost realism figures from the evaluation summaries which the agency released to Norden on May 17 and that the protester did not see those figures until it received the agency's report on the protest on June 23. Therefore, Norden maintains that it timely raised its arguments based on the cost realism figures when it filed its July 10 comments on the Navy's report.

Based on further review of the record, including the Navy's comments on this issue, we agree with Norden that the part of its protest relating to the alleged improper use of the agency's own figures in the cost evaluation was timely filed. The Navy now explains that when it released the evaluation summaries to Norden on May 17, it deleted some information relating to the cost realism analysis from those documents. Thus, we reverse our initial decision with respect to the timeliness of the first portion of the cost evaluation issue and we will consider its merits. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1989).

We will not, however, consider the merits of Norden's contention that the Navy improperly increased Norden's evaluated cost due to the need to train the firm's employees and to make up for other proposal deficiencies. Norden knew, based on the information contained in the evaluation documents it was given on May 17, that the Navy believed that a contract with Norden would require an expenditure of \$68,112 by the Navy to train Norden personnel and that an additional \$533,494 would need to be expended to bring Norden up to the level of the awardee. Since Norden did not contest this matter until it filed its July 10 comments on the agency report, this portion of the cost analysis issue

was properly dismissed as untimely. See 4 C.F.R.
§ 21.2(a)(2); Horizon Trading Co., Inc., et al., B-231177 et
al., July 26, 1988, 88-2 CPD ¶ 86.1/

As we explained in our initial decision, the awardee's best and final offer (BAFO) was more highly rated technically than Norden's. The Navy analyzed the offerors' proposed costs for realism, which resulted in the following:

	<u>Proposed</u> <u>Cost</u>	<u>Adjusted</u> <u>Cost</u>
Comptek	\$7,857,091	\$8,213,908
Norden	\$7,792,533	\$7,816,514

According to this analysis Norden's adjusted cost was \$397,394 less than Comptek's. However, in order to quantify the cost impact of awarding to Norden with its lower rated technical proposal, the Navy conducted a second analysis where it determined that the cost to the government to bring Norden's performance up to the level of Comptek would be \$601,606. When this difference in technical quality was factored in by increasing Norden's cost by \$601,606, the actual cost of an award to Norden was considered by the Navy to be \$204,212 more than an award to Comptek and, on that basis, the agency decided to make award to Comptek.

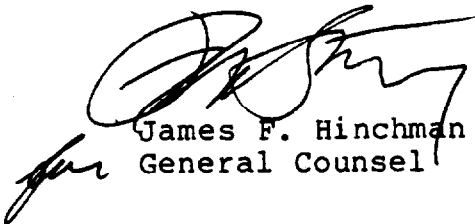
Norden argues that the Navy's evaluators determined "that it would cost \$204,212 to select Norden due to its lower technical rating," and that since the adjusted or evaluated cost of Norden's proposal was \$397,394 less than that of Comptek, there still would be a "cost advantage to the Navy of \$193,182 if Norden were selected."

1/ We also do not reinstate Norden's arguments relating to the Navy's technical evaluation. In its comments on the agency's report, Norden for the first time, challenged the Navy's evaluation of its technical proposal, arguing specifically that it should have received a higher score under the "Personnel resources" factor. Norden's reconsideration request confirms, as we concluded in our initial decision, that on May 17, the Navy provided to Norden the technical evaluation summary on Norden's proposal. Since Norden had that summary on May 17, its protest argument concerning the specifics of the evaluation summary, raised for the first time on July 10, was untimely. See 4 C.F.R.
§ 21.2(a)(2).

The problem with Norden's argument is that \$601,606, not \$204,212, was the amount which the agency determined would be necessary to make Norden's proposal technically equal to Comptek's. Thus, Norden's calculation--\$397,394 (Norden's cost advantage based on evaluated costs) minus \$204,212 resulting in a \$193,182 advantage for Norden--is meaningless. As explained above, the Navy determined that an additional expenditure of \$601,606 by the government would be necessary to assure that a contract with Norden was technically equivalent to one with Comptek. Under the circumstances, even though Norden proposed a less costly effort than Comptek and the effort proposed by Norden was evaluated by the agency to cost less than Comptek's, in the judgment of the contracting officer, Comptek's technical advantage, which the agency quantified at \$601,606, outweighed the cost advantage of a contract with Norden.

Since under the solicitation, technical concerns were far more important than cost we have no objection to the Navy's cost-technical tradeoff that resulted in an award to the higher rated, higher cost offeror.^{2/}

On reconsideration, the protest is denied in part and dismissed in part and our initial decision is modified accordingly.


James F. Hinchman
General Counsel

^{2/} As explained in our initial decision, the solicitation listed five evaluation areas, the first two of which were of equal importance and the most important. The remaining areas were listed in descending order of importance. The areas were: Corporate past experience; Personnel resources; Management plan/technical approach; Contractor facilities and Cost and cost realism.